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Supreme Court of the United States

OCTOBER TERM, 19—.

No. 1090

ROSENDO SCOTT,
PETITIONER,

v.

FELIPE SEGARRA-SERRA,
RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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Statement of Facts

Felipe Segarra-Serra (hereinafter called Respondent) brought an unlawful detainer action on January 22, 1954, at the Superior Court of Puerto Rico, San Juan Part, against Rosendo Scott (hereinafter called Petitioner). Respondent alleged that he was the owner of a building located at 1409 Ponce de Leon Avenue, San Juan, Puerto Rico; that Petitioner occupied the commercial premises on the east side of the ground floor under a month lease contract providing for a monthly rental of $419.80, and that Respondent desired in good faith to withdraw the premises from the rental market and recover them for his own use.

Petitioner answered the complaint and alleged that Respondent did not actually seek in good faith to withdraw the leased premises from the rental market and devote them to his own use and that Respondent was acting in bad faith because the Economic Stabilization Administration of Puerto Rico, reduced the rental price for the premises, at defendant's (Petitioner's) request, from $550.00 to $439.80 a month and that "his action was aimed at taking revenge on the defendant (Petitioner)".

The premises were built in 1951, that is, after the approval of the Reasonable Rents Act of Puerto Rico (Act No. 464, Laws of Puerto Rico, 1946, as amended by Act No. 201, Laws of Puerto Rico, 1948; 17 L.P.R.A., Section 186).

Aforementioned Section 186, provides:

> "If the dwelling or building was constructed after October 1, 1942, the Administration shall fix the reasonable rent on the basis of the cost of construction of said dwelling or building; It being understood that in no case shall the reasonable rent, as computed for

one year, exceed twelve (12) per cent of the cost of the works".

In accordance with the section of the law heretofore transcribed, Respondent knew at the time of the construction of the building that he could not get for the premises a rental of more than twelve per cent (12%) of his investment, viz: cost of the lot plus cost of the construction of the building.

Respondent Segarra-Serra, did not register this premises in the Office of Rent-Control Administration, as provided by law.

On the contrary, after the buiiding had been devoted to the rental market for over two years, and after Respondent had been notified by the Rent-Control Administration of tenant's petition for evaluation, that is in 1953, was that Respondent proceeded to register this premises.

Upon registration of the premises, a hearing and a rehearing were held wherein Respondent appeared and had his day in Court, and abide by the judgment of the Rental Control Administration reducing the rental of said premises as aforesaid.

When notified of the reduction of the rental price to $439.80 per month, Respondent then decided to take the premises to establish himself in business.

A trial on the merits was timely held, and, on September 20th, 1954, the Trial Court entered its Findings of Fact, Conclusions of Law and Judgment.

From the Findings of Fact made by the Trial Court, it appears that Plaintiff (Respondent, herein) and/or his sons were the principal stockholders, holding more than 50% of the shares of a firm known as "Bengoa Hermanos", which formerly occupied the premises now occupied by Petitioner herein.

"Bengoa Hermanos", was indebted to Respondent for

over $20,000.00 and exacted from Petitioner the amount of $9,000.00 for the premises, which Petitioner had to improve at a cost of—$6,000.00, plus $10,000.00 that Petitioner invested in advertising, in order to lift up the commercial value of the place.

Upon the basis of its findings of fact, the Trial Court concluded, as a matter of law, that Plaintiff (Respondent, herein) had not complied with the requirements of good faith established by Section 12-A-7, of the Reasonable Rents Act of Puerto Rico, which compliance Respondent had the burden to prove.

The Statute involved in the case, as previously stated, was: Act No. 464, Laws of Puerto Rico, 1946, as amended by Act No. 201, Laws of Puerto Rico, 1948; 17 L.P.R.A., Section 193.

Accordingly, the Superior Court of Puerto Rico, San Juan Part, entered a judgment against Plaintiff (Respondent, herein).

Plaintiff (Respondent, herein) appealed from that decision to the Supreme Court of Puerto Rico, which court on April 30, 1956, issued a short per curiam opinion and judgment, affirming the judgment rendered by the Superior Court, San Juan Part.

The Supreme Court of Puerto Rico stated in its opinion and judgment:

> "Under Sec. 21-A-7 of the Reasonable Rents Act,[1] a landlord must show that in good faith he needs the premises for his own use in order to evict a tenant who is in possession of commercial premises under a month-to-month contract; *Rosello Hnos.* v. *Figueroa,* 74 P.R.R. 403; 78 P.R.R. 361, 367, and cases cited; *Mourino* v. *Superior Court,* 76 P.R.R. 273.

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[1] Act No. 464, Laws of Puerto Rico, 1946, as amended by Act No. 201, Laws of Puerto Rico, 1948; 17 L.P.R.A. Sec. 193.

We agree that merely because a landlord decides to use the property himself after the rent fixed under a rent control law is reduced, does not *in itself* show bad faith. But in this case there were additional circumstances which convinced the trial court that the plaintiff did not meet the burden of establishing his good faith. As the record contains sufficient evidence to sustain this conclusion we shall not interfere with it.

The judgment of the Superior Court will be affirmed."

Not satisfied with the decision of the Supreme Court of Puerto Rico, Plaintiff (Respondent, herein) entered an appeal to the United States Court of Appeals, for the First Circuit.

On March 19, 1957, the United States Court of Appeals for the First Circuit, entered a judgment (*Felipe Segarra-Serra,* Plaintiff-Appellant vs. *Rosendo Scott,* Defendant-Appellee, No. 5141), vacating the judgment of the Supreme Court of Puerto Rico.

Jurisdiction to Review

The date of the judgment of the Court of Appeals sought to be reviewed was: March 19, 1957.

Jurisdiction of this Court is invoked under Section 1254, Title 28, U.S.C.A., Judiciary and Judicial Procedure.

Questions Presented

1. Whether the Court of Appeals can entertain and decide a case where only "local law" is involved, and in which there is no law of Congress or any constitutional question involved.

2. Whether the Court of Appeals can disregard and ignore the doctrine set and established by this Honorable Court, in relation to interpretations of "local law" by the Supreme Court of Puerto Rico.

3. Whether two judges, assigned to a different Circuit and constituting a majority, can intervene in, and decide a case corresponding to a Circuit which is not the one to which they are assigned.

4. Whether the Court of Appeals, can entertain and consider an appeal from the Supreme Court of Puerto Rico, in a matter of purely "local law", in view of the terms of the "compact" offered to the People of Puerto Rico, by Public Law 600, 64 Statute 319, 48 U.S.C.A., Section 731, note.

Reasons for Granting the Writ

For the sake of brevity, instead of accompanying this petition with a supporting brief, we are going to present a full argument regarding the questions presented for the consideration of this Honorable Court:

1. Whether the Court of Appeals can entertain and decide a case where only "Local Law" is involved, and in which there is no law of Congress or any constitutional question involved.

2. Whether the Court of Appeals can disregard and ignore the doctrine set and established by this Honorable Court, in relation to interpretations of "local law" by the Supreme Court of Puerto Rico.

We hereby submit that the Court of Appeals can not

entertain and decide a case where only "local law" is to be considered, and in which there is no law of Congress or any constitutional question involved, especially, that the Court of Appeals can not disregard and ignore the doctrine set, established, and one hundred times ratified by this Honorable Court, in relation to interpretations of "local law" by the Supreme Court of Puerto Rico.

In *Bonet* v. *Texas Co. (P. R.) Inc.*, (*Douglas*, 1939), 308 U.S. 469; 84 L.Ed. 405, this Court said:

> "For over sixty years this Court has consistently recognized the deference due interpretations of local law by such local courts unless they appeared to be clearly wrong From *Sweeney* v. *Lomme*, 22 Wall. (U. S.) 208, 22 L.Ed. 727, decided in 1874, to *Bonet* v. *Yabucoa Sugar Co.*, 306 U.S. 505, 307 U.S. 513, 83 L.Ed. 946, 59 S.Ct., 626, supra, decided in 1939, repeated admonitions to that effect have been given. That rule is founded on sound policy. As this Court recently stated, "Orderly development of the government of Puerto Rico as an integral part of our governmental system is well served by a careful and consistent adherence to the legislative and judicial policy of deferring to the local procedure and tribunals of the Island". *Bonet* v. *Yabucoa Sugar Co.* (Supra) 306 U.S. page 510, 83 L.ed. 949, 59 S.Ct. 626.
>
> We now repeat once more that admonition. And we add that mere lip service to that rule is not enough. To reverse a judgment of a Puerto Rican tribunal on such a local matter as the interpretation of an act of the local legislature, it would not be sufficient if we or the Circuit Court of Appeals merely disagreed with that interpretation. Nor would it be enough that the Puerto Rican tribunal chose what

might seem, on appeal, to be the less reasonable of two possible interpretations. And such judgment of reversal would not be sustained here even though we felt that of several possible interpretations that of the Circuit Court of Appeals was the most reasonable one. For to justify reversal in such cases, the error must be clear or manifest; the interpretation must be inescapably wrong; the decision must be patently erroneous.

Moreover, this clear doctrine of deference to the decisions of the Supreme Court of Puerto Rico, was vividly expressed by Mr. Justice Holmes, in the following words:

"This Court has stated many times the deference due to the understanding of the local courts upon matters of purely local concern. It is enough to cite *De Villanueva* v. *Villanueva,* 239 U.S. 293, 299, 60 L.ed. 293, 296, 36 S.Ct. 109; *Nadal* v. *May,* 233 U.S. 447, 454, 58 L.ed. 1040, 1041, 34 S.Ct. 611. This is specially true in dealing with the decisions of a Court inheriting and brought up in a different system from that which prevails here. When we contemplate such a system from the outside it seems like a wall of stone, every part even with all the others, except so far as our own local education may lead us to see subordinations to which we are accustomed. But to one brought up within it, varying emphasis, tacit assumptions, unwritten practices, a thousand influences gained only from life, may give to the different parts wholly new values that logic and grammar never could have got from the books." *Diaz* v. *Gonzalez,* 261 U.S. 102, 105, 106, 67 L.Ed. 550-552, 43 S.Ct. 286.

We further submit that the Supreme Court of Puerto

Rico *was not inescapably wrong* in its reasoning and inferences with relation to each and all of the extrinsic matters considered, including the additional circumstances which in the criterion of the Supreme Court of Puerto Rico, convinced the trial court that the plaintiff did not meet the burden of establishing his good faith, and its assertion that the record contained sufficient evidence to sustain the conclusions of the trial court.

We also submit that the Superior Court of Puerto Rico, San Juan Part, did not commit error in undertaking to construe, interpret and apply Section 12-A of the Reasonable Rents Act of Puerto Rico (17 L.P.R.A., Section 193), such issue being peculiarly within its jurisdiction, as a local law enacted by the Legislature of the Commonwealth of Puerto Rico.

In the case at bar, the judgment entered by the Superior Court of Puerto Rico, San Juan Part, was an interpretation of an act of the local legislature. No law of Congress or any constitutional question was involved in this case and not even lurking on the record. Moreover, the record in this case does not show that any jurisdictional or constitutional question was raised by Respondent, (Plaintiff, herein) neither before the Superior Court of Puerto Rico, San Juan Part, which was the trial Court, nor before the Supreme Court of Puerto Rico.

The law in this respect reads as follows:

> "The courts of appeals for the First and Ninth Circuits shall have jurisdiction of appeals from all final decisions of the Supreme Courts of Puerto Rico and Hawaii, respectively in all cases involving the constitution, laws or treaties of the United States or any authority exercised thereunder, in all habeas corpus proceedings, and in all other civil cases where the

value in controversy exceeds $5,000.00, exclusive of interests and costs."

28 U.S.C.A., Section 1293.

This statute has been interpreted by the Court of Appeals for the First Circuit, in over a dozen cases, and it has constantly established:

"We do not pause to consider the *appellants'* present constitutional contention for it was not presented to the Supreme Court of Puerto Rico and this court held categorically in *Prensa Insular de Puerto Rico* v. *People of Puerto Rico,* 1951, 189 F.2d 1091 that we do not have appellate jurisdiction grounded upon the presence of a federal question to review final decisions of the Supreme Court of Puerto Rico unless the federal question relied upon to sustain our appellate jurisdiction was reasonably raised below". *Denis Maldonado* v. *Savings and Loan Fund Association* 222 F.2d 78, 80.

"Where federal question was not presented to Supreme Court of Puerto Rico in any way, shape or manner, though it undoubtedly might have been presented on appeal from judgment of Superior Court of Puerto Rico, question was not before United States Court of Appeals for the First Circuit on appeal from judgment of the Supreme Court of Puerto Rico, and could not be relied on as a basis for appellate jurisdiction of the Court of Appeals."

Mario Mercado e Hijos v. *Lluberas Pasarell,* 225 F.2d 715.

In addition to what precedes, we submit that in the case at bar there is no value in controversy. No matter what the value of the building is, the only question involved is the desire of Respondent to withdraw the premises from the rental market and recover them for his own use, by evicting his tenant who is the Petitioner.

In consequence of all the aforesaid, we submit that the Court of Appeals had no right to entertain and decide this case, and, furthermore, we submit that in entertaining and deciding it, the Court of Appeals, disregarded and ignored the constant doctrine set and established by this Honorable Court, in relation to interpretations of "local law", as construed by the Supreme Court of Puerto Rico and by the trial Courts of Puerto Rico.

3. Whether two judges, assigned to a different Circuit and constituting a majority, can intervene in, and decide a case corresponding to a Circuit which is not the one to which they are assigned.

Judge *Woodbury,* from the First Circuit, and Judges *Maris* and *Kalodner,* from the Third Circuit, formed the bench that heard and decided this case.

The majority, was obviously constituted by two Judges by designation, that is to say, two Judges that are not assigned regularly to the First Circuit.

Rule 4, of the United States Court of Appeals for the First Circuit, reads as follows:

> "Quorum — Recess. Two judges shall constitute a quorum. In the absence of a quorum, on any day appointed for holding a session of the Court, any judge who attends (or if no judge is present, the clerk or

deputy clerk) may recess the session to a day certain, or sine die."

U. S. Ct. of App. 1st. Cir. Rule 4(1).

In view of the aforesaid, we submit that there was no quorum to hear and decide this case, inasmuch as two of the Judges intervening, and that constituted a majority, were assigned to the Third Circuit which is not the one at whose bench they were sitting.

4. Whether the Court of Appeals, can entertain and consider an appeal from the Supreme Court of Puerto Rico, in a matter of purely "local law", in view of the terms of the "compact" offered to the People of Puerto Rico, by Public Law 600, 64 Statute 319, 48 U.S.C.A., Section 731, note.

With the advent of the Constitution of the Commonwealth of Puerto Rico, and the creation of this political body,[1] the Supreme Court of Puerto Rico ceased to be a legislative Court created by Congress under its power to legislate over the territories. After that the Supreme Court of Puerto Rico, was a creature of the Constitution of the Commonwealth of Puerto Rico as this Constitution was written and enacted by the People of Puerto Rico.

Before the enactment of the Constitution of the Commonwealth of Puerto Rico, the Supreme Court of Puerto Rico was a creature of Congress,[2] and in consequence thereof, its decisions were subject to review by the higher federal courts.

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[1] P. L. 600, 81st Congress, 48 U.S.C.A. (1951).

[2] Foraker Act, 31 Statutes 85; Jones Act, approved March 2, 1917, 39 Statutes 951.

In consequence of the aforesaid we are compelled to submit that under the Constitution of the Commonwealth of Puerto Rico, the Federal Courts,[3] have no jurisdiction or authority to review the judgments rendered by the local Courts of the Commonwealth of Puerto Rico, except in cases involving a law of Congress, or the Constitution or any treaty of the United States or any authority exercised thereunder.

Public Importance

The questions presented in this petition are of general public importance and the decision below constitutes a plain misapprehension of the principles constantly reaffirmed by this Honorable Court in dealing with decisions of the Supreme Court of Puerto Rico, in matters of "local law", for which reason it seems that this is peculiarly a case for the exercise of this Court's power of supervision and review.

This case involves a conflict between the Court of Appeals for the First Circuit and the Supreme Court of the United States, and this Court alone can settle the question and reconcile the conflict which is one of general interest concern.

WHEREFORE, your petitioner respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Court directed to the United States Court of Appeals for the First Circuit, sitting at Boston, Massachusetts, commanding that Court to certify and to send to this Court, on a day certain to be therein named, a full and complete transcript of the record and all proceedings had in this case numbered and entitled on its docket 5141, to the end that this case may be reviewed and determined

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[3] Court of Appeals for the First Circuit of the United States. Supreme Court of the United States.

by this Court; that the said judgment of the United States Court of Appeals for the First Circuit may be reversed by this Court; and that your petitioner may have such other and further relief in the premises as may seem just and proper.

San Juan, Puerto Rico, this 2nd day of May, 1957.

Respectfully submitted,

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EXHIBIT NO. 1.

In the Supreme Court of Puerto Rico

Appeal from the Superior Court, San Juan, Part. 11,550.
Unlawful detainer.

Rosendo Scott, Defendant, Appellee,

v.

Felipe Segarra-Serra, Plaintiff, Appellant,

San Juan, Puerto Rico, April 30, 1956.

Per Curiam: This is an unlawful detainer suit filed in the Superior Court by a landlord to evict a tenant who is occupying commercial premises under a month-to-month contract. The landlord alleged that he needed the premises in good faith for his own use. After a trial on the merits, the Superior Court held that the landlord had not established his good faith and entered a judgment dismissing the complaint. The case is here on appeal from that judgment.

Under Sec. 12-A-7 of the Reasonable Rents Act,* a landlord must show that in good faith he needs the premises for his own use in order to evict a tenant who is in possession of commercial premises under a month-to-month contract. Rosello Hnos. v. Figueroa, 74 P.R.R. 403, 78 P.R.R. , decided May 6, 1955; Heirs of Perez v. Gual, 75 P.R.R. 361, 367, and cases cited; Mourino v. Superior Court, 76 P.R.R. , decided March 29, 1954.

We agree that merely because a landlord decides to use the property himself after the rent fixed under a rent control law is reduced, does not in itself show bad faith. But in this case there were additional circumstances which convinced the trial court that the plaintiff did not meet the burden of establishing his good faith. As the record contains sufficient evidence to sustain this conclusion, we shall not interfere with it.

The judgment of the Superior Court will be affirmed.

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* Act No. 464, Laws of Puerto Rico, 1946, as amended by Act No. 201, Laws of Puerto Rico, 1948; 17 L.P.R.A. Sec. 193.

EXHIBIT NO. 2.

United States Court of Appeals
For the First Circuit

No. 5141.

FELIPE SEGARRA-SERRA,

PLAINTIFF, APPELLANT,

v.

ROSENDO SCOTT,

DEFENDANT, APPELLEE.

APPEAL FROM THE SUPREME COURT OF PUERTO RICO.

Before MARIS, WOODBURY and KALODNER, *Circuit Judges.*

Enrique Cordova Diaz, with whom *Brown, Newsom & Cordova* was on brief, for appellant.

Benicio Sanchez Castano, with whom *Felix Ochoteco, Jr.* and *Rafael Rivero Cervera* were on brief, for appellee.

OPINION OF THE COURT.

March 19, 1957.

MARIS, *Circuit Judge.* This is an appeal by the plaintiff from a judgment of the Supreme Court of Puerto Rico affirming a judgment of the Superior Court, San Juan Part, dismissing his complaint in an action for unlawful detainer. The action was brought to recover possession of commercial premises constituting a part of the ground floor of a building owned by the plaintiff at 1409 Ponce de Leon Avenue in Santurce. The plaintiff alleged that the defendant occupied the premises under a month-to-month lease contract, that he desired in good faith to withdraw them from the rental market and to recover them for his own use and that he had given the defendant notice to vacate as required by law. The defendant's answer alleged

that the plaintiff did not seek in good faith to withdraw the leased premises from the rental market in order to devote them to his own use but was seeking to take revenge because of a rent reduction from $550.00 to $439.80 a month which had been made by the Economic Stabilization Administration at the defendant's request.

The Superior Court after a trial on the merits filed its findings of fact, conclusions of law and judgment in favor of the defendant and dismissed the complaint. On appeal by the plaintiff the Supreme Court of Puerto Rico affirmed the judgment and the case is now here on appeal from that action.

The case presents to us the question whether Section 12-A of the Reasonable Rents Act of Puerto Rico,[1] as interpreted and applied by the Superior Court, has deprived the plaintiff of his property without due process of law. Subdivision 7 of Section 12-A of the Reasonable Rents Act authorizes a landlord to recover possession of leased premises through unlawful detainer proceedings "Whenever he needs for himself, in good faith, the commercial or business premises". Following the decision of this court in *Rivera* v. *R. Cobian Chinea & Co.*, 1950, 181 F.2d 974, and in order to uphold the constitutional validity of the statute the Supreme Court in *Roselló Hnos.* v. *Figueroa*, 1953, 74 P.R.R. 403, construed the quoted phrase to mean: "Whenever he desires, in good faith, to withdraw the commercial or business premises from the rental market and devote them to his own use."

In *Heirs of Pérez* v. *Gual*, 1953, 75 P.R.R. 361, the Supreme Court was again called upon to consider the applicability of subdivision 7 of Section 12-A to an action for the unlawful detainer of business premises. The court adhered to its ruling in the Roselló Hnos. case, stating that

[1] 17 L.P.R.A. § 193.

the only real controversy in the case before it was the question of the good faith of the plaintiffs in desiring to withdraw their premises from the rental market and devote them to their own use. On the question of good faith Justice Perez Pimentel, speaking for the court, said: (p. 367)

> "In cases like the present one, as in the cases under the Federal Emergency Price Control Act of 1942, good faith is not presumed. The burden is on plaintiff to prove by a preponderance of the evidence that he seeks in good faith to recover possession of the premises. *Lakowski* v. *Kustohs,* 66 N.E. 2d 487; *Scharf* v. *Waters,* 66 N.E. 2d 299. Although it is difficult to define in precise words the term 'good faith' because the determination of whether or not it actually exists is a question of fact which depends upon many circumstances, *Lakowski* v. *Kustohs,* supra; *Sviggum* v. *Phillips,* 15 N.W. 2d 109, still, this term has been generally defined as meaning 'honestly, without fraud, collusion, or deceit.' *Bumgarner* v. *Orton,* 63 Cal. App. 2d Supp. 841, 146 P. 2d 67; *Staves* v. *Johnson,* 44 A.2d 870. Annotation in 10 A.L.R. 2d 319. It has been held that there is absence of good faith whenever the lessor, in seeking to evict the tenant, is impelled by some ulterior reason for the purpose of evading or defeating the purposes of the Act, *Gibson* v. *Corbett,* 200 P.2d 216, as for example, where plaintiff's purpose was to have revenge against the tenant who was awarded treble damages for rent illegally overcharged, *Snyder* v. *Reshenk,* 131 Conn. 252, 38 A. 2d 803; or when the dominant purpose is to evict the tenant and not to recover the premises, *Staves* v. *Johnson,* supra; *McSweeney* v. *Wilson,* 48 A.2d 469; or when the objective is to evict him because of the refusal to pay a rental in excess of the authorized

maximum, *Brown* v. *Wood*, 59 F. Supp. 872; or when the purpose is to provide space for third parties where the statute does not authorize such action, *Lelek* v. *Baker*, 309 Mich. 210, 14 N.W. 2d 838."

When it considered the facts of the *Pérez* case the Supreme Court held that there were not present in the case circumstances such as those just described or similar ones which might defeat the right of the plaintiffs to evict the tenant. The court, on the contrary, held that the plaintiffs have shown that their dominant purpose was to operate a business of their own and not merely to dispossess their tenant. Since the evidence of the plaintiffs' good faith had not been overcome by the defendant's evidence the court held that the constitutional right of the plaintiffs to evict their tenant was clear and that they were entitled to proceed with their unlawful detainer action.

The Roselló Hnos. case came before the Supreme Court again in 1955. In disposing of the second appeal the court held that the good faith required of a lessor by Section 12-A is the good faith recognized in equity, as honest desire to obtain the leased premises to devote them to his own use and not merely to oust the tenant or work a reprisal upon him for his refusal to acquiesce in the exaction of unlawfully high rentals. *Roselló Hnos.* v. *Figueroa et al.*, 1955, 78 P.R.R. , affirmed, 1 Cir. 1956, 233 F.2d 248.

In the case before us the plaintiff concedes that while he had always had in the back of his mind an intention at some time to use the premises in question for his own business that intention materialized into a present desire when the Economic Stabilization Administration reduced the rent which he was receiving from the defendant by the sum of $110.20 per month. He testified that since he believed that he could make more money with the premises by using them himself than by receiving the reduced rental

he decided to take them back for that purpose, gave the defendant notice to vacate and upon his failure to do so instituted the action now before us. In dismissing his complaint the Superior Court in its opinion said:

"The circumstances in the above-entitled case do not reveal good faith on the part of plaintiff. The purpose of the law is precisely to prevent that the tenants be charged excessive rates. Plaintiff's action in waiting until April 1953 to register the premises and his reaction when the rental was reduced, show that the motive which prompted him to recover the premises was defendant's action in requesting the adjustment of the rent which he had been paying and the decision of the Office of Economic Stabilization Administration reducing by more than $100 the rental agreed upon.

"Plaintiff has been in business for upwards of 20 years. He erected the building where the premises are situated. He operated a business in which he, or he and his children, owned the majority of the shares. If his purpose from the time the building was constructed had been to engage in commerce, that purpose existed only in his mind. However, his aim or purpose as evidenced by his acts is different from what he testified at the witness stand. If his purpose was to use the premises for a business of his own, why did he not do so before making the lease contract with the defendant? Why did he not purchase the stock in hand of Bengoa Hermanos and establish his business when the latter decided to discontinue its business? Why did he not ask for the premises to establish his own business during the three years the defendant has been paying a rent of $550? Contrary to a showing of good faith on the part of plaintiff, the bad faith has been established by his action

in withdrawing the premises from the rental market and instituting an unlawful detainer proceeding upon reduction of the lease rental."

The plaintiff urged before the Supreme Court and urges here that the Superior Court did not apply to the facts of his case the constitutional standard of good faith. He argues that the good faith required to be shown is directed to the existence of an honest desire and intention on the part of the owner to withdraw the leased premises from the rental market and devote them to his own use and that the existence of good faith in this regard is not negatived by the fact that the intention has arisen because of the fact that the rent has been ordered to be reduced to a level where the owner believes that it will be to his financial advantage to occupy and use the premises himself. The Supreme Court of Puerto Rico agreed with this contention and so do we. The Supreme Court said:

> "We agree that merely because a landlord decides to use the property himself after the rent fixed under a rent control law is reduced, does not *in itself* show bad faith."

But the Supreme Court went on to say that there were in this case additional circumstances which convinced the trial court that the plaintiff did not meet the burden of establishing his good faith. Holding that the record contains sufficient evidence to sustain this conclusion the court said that it would not interfere with it and accordingly affirmed the judgment of the Superior Court. We are satisfied that in doing so the Supreme Court deprived the plaintiff of his right to have the constitutional standard of good faith applied by the Superior Court to the facts of his case. For it is clear to us that the Superior Court did not apply, in evaluating the facts in this case, the standard of good faith which the Supreme Court of Puerto Rico has rightly laid down as required to be applied in order that

the Act may not deprive landlords of their property without due process of law.

It is true that the Superior Court indicated that it thought that under certain circumstances a landlord may be regarded as acting in good faith when he seeks to withdraw his premises from the rental market because of a reduction in the rental. However, it limited this proposition to cases where the taxes and mortgage interest payable by the landlord with respect to the leased premises are so great that the continuance of the property in the rental market would result in an actual financial loss to him. This clearly was too restrictive a standard to apply. For, as the Supreme Court held in this very case, a landlord has the right under Section 12-A as the court has construed it to recover possession of leased premises if he honestly desires to withdraw them from the rental market and devote them to his own use regardless of the financial results which may ensue. His motive is immaterial if his intention actually to take the premises out of the rental market is honestly entertained. The thing which induces his decision may be his belief that the reduced rent is too low or his exasperation at his tenant's action in securing the reduction. See *Taylor* v. *Bowles,* Em. App. 1944, 145 F.2d 833, 835-836. Accordingly the fact that the landlord has exhibited some feeling to his tenant is not controlling. For such is the frailty of human nature. The only question for the trial court to determine in such a case is whether the landlord's intention is really to take the premises out of the rental market and use them himself or whether his expressed intention to do so is a mere subterfuge or excuse to hide his dominant purpose of punishing a tenant who has declined to pay excessive rents or who has procured a rent reduction. In this connection it should be remembered that the Act impose substantial penalties on a land-

lord who does not carry through his expressed intention to withdraw the premises from the rental market.[2]

The defendant urges that there is in the record in this case evidence indicating a desire on the part of the plaintiff to harass the defendant. He points to the evidence that the plaintiff's employees after the rent reduction interfered to some degree with parking privileges which the defendant had previously enjoyed without restriction. The plaintiff, on the other hand, points to certain items of evidence in the form of admissions by the defendant at the trial which might be held to negative any feeling of hostility by the plaintiff against the defendant. Thus the defendant admitted that when the plaintiff told him that he desired to have the premises back he also stated that he was making an effort to locate other rental premises for the defendant's use. Furthermore it appears that the defendant occupies a residence under lease from the plaintiff and the defendant admitted that the plaintiff has never made any effort to terminate his possession of it. Also the defendant admitted that on several occasions he had been in arrears in his rent but that the plaintiff had made no effort to institute unlawful detainer proceedings against him based on those rent delinquencies.

Since it is clear on this record that the Superior Court made its finding of bad faith upon the application of an improper standard we think that the Supreme Court should have remanded the case in order to have the evidence reconsidered by the Superior Court in the light of the constitutional standard of good faith which the Supreme Court has laid down and which we have discussed in this opinion.

The judgment of the Supreme Court will accordingly be vacated and the cause will be remanded to that court for remand to the Superior Court for further proceedings not inconsistent with this opinion.

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[2] See 17 L.P.R.A. §§ 193, 202.